

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

STEVEN WHEELER,
Plaintiff,

v.

RONNIE MORAN, Chief of Police,
Officially and Individually;
TENNESSEE DEPARTMENT OF REVENUE,
Defendants.

Case No: 3-07-0198

JUDGE HAYNES

MAGISTRATE JUDGE BRYANT

MOTION TO DISMISS

Defendant, the Tennessee Department of Revenue ("the Department"), through the Attorney General of Tennessee, moves this Court to dismiss this suit with respect to the Department under Fed. R. Civ. P. 12(b)(1) and (6) for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted. Plaintiff Steven Wheeler ("Plaintiff") asserts that this Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343 by way of 42 U.S.C. §§ 1983, 1985, and 1988. Complaint at ¶ 1. Plaintiff further alleges that "Defendant Tennessee Department of Revenue ["Department of Revenue"] is an Agency for the State of Tennessee." Complaint at ¶ 4.

Plaintiff's purported causes of action under 42 U.S.C. §§ 1983, 1985, and 1988 are inapplicable to the Department because it, as an arm of the State of Tennessee, is not a person within the meaning of those statutes. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989). The claims are also barred by the State of Tennessee's sovereign immunity from suit by its citizens in federal court, as recognized by the Eleventh Amendment of the United States Constitution. The